### **FISCAL NOTE**

Bill #: HB0096 Title: Sunset and review of adminstrative rules

Primary Sponsor: J. Sinrud Status: As Introduced

Sponsor signature	Date	David Ewer, Budget Director	Date
Fiscal Summary			
1 isedi Sulmidi y		FY 2006	FY 2007
		<b>Difference</b>	<b>Difference</b>
<b>Expenditures:</b>			
General Fund		\$400,947	\$393,272
State Special Revenue		\$935,012	\$915,681
Federal Special Revenue		\$165,539	\$164,481
Other – Retirement Trust Fund		\$18,545	\$18,545
Revenue:			
General Fund		\$0	\$0
State Special Revenue		\$0	\$0
Federal Special Revenue		\$0	\$0
Other		\$0	\$0
<b>Net Impact on General Fund Balance</b>	:	(\$400,594)	(\$393,272)
Significant Local Gov. Impact		Technical Co	ncerns
☐ Included in the Executive Budget		Significant Long-Term Impacts	
Dedicated Revenue Form Attached		Needs to be i	ncluded in HB 2

#### Fiscal Analysis

#### **ASSUMPTIONS:**

1. The following agencies believe they can absorb the impact of this legislation within current operating budgets or cannot identify the fiscal impact: Governor's Office, Public Service Commission, Montana State Library, Department of Livestock, Department of Administration, Appellate Defender, Consensus Council, Department of Corrections, Department of Commerce, and the Department of Military Affairs.

#### Secretary of State's Office

2. The Secretary of State's Office could potentially have to raise the per page fee for printing administrative rules, but it is unknown for sure and how much the increase would be. For purposes of this fiscal note, it is assumed that the per page rate remains at \$40.

#### **Commissioner of Political Practices**

3. The review required by HB 96 would involve agency resources including staff time, legal staff time, and other operating expenditures including printing of pages in the Montana Administrative Register.

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- 4. The costs per rule could vary significantly depending on several factors including: whether or not the rule is contested, whether or not the rule would have to be repealed, amended, reproposed and readopted, whether a public hearing on the rule would be necessary and the number of amendments that might be necessary.
- 5. Assuming that no public hearing would be necessary on any agency rule amendments, reproposals and readoptions, a minimum of 1 hour of legal staff time (\$71.80 per hour Agency Legal Services), 1 hour of administrative staff time, and 1 page printed in the Montanan Administrative Register (\$40 per page) would be necessary for each agency administrative rule (75 rules total). Total cost to the office would be \$1.400.

#### Montana School for the Deaf & Blind (MSDB)

- 6. The MSDB has four Administrative Rules relating to the private foundation charged with managing funds donated to the school and eleven rules relating to the school's operation.
- 7. The Secretary of State's Office charges \$40 per page for Administrative Rules.
- 8. The Agency Legal Services charge to review each ARM is estimated at 5 hours at current rate of \$71.80 per hour for a total of \$359 per ARM.
- 9. The bill allows up to six years for the review process to be completed. Since the legal charge from agency Legal Services (ALS) can not be determined beyond the 2007 biennium, this fiscal note assumes the review will be completed in the 2007 biennium.

#### **Montana Arts Council (MAC)**

- 10. The agency has rulemaking authority for Cultural and Aesthetic Projects grants only.
- 11. The rate of legal services will remain at the 2005 level of \$71.80/hour.
- 12. Fifteen hours will need for the ALS attorney review the rules. Total increased cost to MAC would be \$1,077.

#### **Montana Historical Society (MHS)**

- 13. The Montana Historical Society Board of Trustees (15 members) will need to participate in repealing, amending, and/or readoption of rules.
- 14. Addition clerical staff for rewriting rules, public notice mailings, and filing rules would be necessary. The society would need a 0.25 FTE grade 12 plus related operating expenses.
- 15. The society will have to pay for attorney time for public rules hearings.
- 16. Current filing costs at Secretary of State is \$40 per page for every notice filed. All rules will have two filings, since the society will need to file proposed notice and adoption of notice with comments from public hearings and society responses to the comments.
- 17. The total estimated cost to MHS would be \$22,572 each year of the biennium.

#### Department of Fish, Wildlife & Parks (FWP)

- 18. During the past two years, the department had 24 rulemaking processes that resulted in publishing 40 pages in the Montana Administrative Register. This required a total of 3,144 hours for travel, hearings, and research and \$13,000 in publishing fees. Rule preparation includes public hearings, rule rationales, responses to public comment, etc.
- 19. The department will need to readopt 325 pages of rules in the next six years or 54 pages per year.
- 20. Assuming the same time and expense per page of rule from the last two years it will take 4,244 hours (3,144/40 pages x 54 pages) and \$17,550 in publishing fees (\$13,000/40 pages x 54 pages).
- 21. The department will need to hire 2.00 FTE paralegal employees to complete these tasks.

#### **Department of Environmental Quality (DEQ)**

- 22. Seventeen rulemaking proceedings will be necessary to repeal, modify, or readopt rules. The Department of Environmental Quality has 2,145 pages of administrative rules.
- 23. The number of pages containing statements of reasonable necessity for rule re-adoptions and modifications will average 25 percent of the number of pages containing the rule language.

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- 24. Notices of proposed re-adoptions and amendments will contain 1,746 pages of rule text and 399 pages containing statements of reasonable necessity and other required language.
- 25. The cost of publication of a page in the MAR will remain at \$40 per page.
- 26. The average notice of proposed rulemaking will contain 126 pages.
- 27. For the 17 rules proceedings, the agency will be required to mail the notice of proposed rulemaking to an average of 150 people. The agency may be able to reduce this cost by up to 66 percent if persons are willing to receive the notices electronically.
- 28. The per packet cost of an average mailing of the notice of proposed rulemaking will be \$3.82 in postage and \$1.57 for copying.
- 29. For nine of the rulemaking proceedings the adopting agency is the Board of Environmental Review (the board).
- 30. For each of the board rulemaking proceedings, the board will direct that a hearing be held and appoint an assistant attorney general as the hearing officer. The board's hearing officer will spend 12 hours per rulemaking proceeding in conducting the hearing and preparing a hearing officer report. The Attorney General's Office charges \$70 per hour for hearing officer services.
- 31. In six of the rulemaking proceedings, a court reporter will prepare a transcript of the hearing. An average transcript prepared by a court reporter will cost \$300.
- 32. The average notice of final rulemaking in each of the 17-rulemaking proceedings will contain 15 pages.
- 33. The agency will mail a copy of the final notice to an average of 50 persons. (The agency may be able to reduce this cost by up to 66 percent if persons are willing to receive the notices electronically.)
- 34. The per packet cost of an average mailing of the notice of final rulemaking will be \$0.60 for postage and \$0.20 for copying.
- 35. The agency will re-adopt, amend, or repeal one sixth of its rules in each of the six years.
- 36. Significant work-hours will be required of program staff and agency attorneys to comply with this legislation. This cost will be absorbed by the agency.
- 37. Total cost over six years equals \$119,677, divided by six years equals approximately \$20,000 additional expense per year.
- 38. It is assumed that funding for this additional expense will be from the general fund.

#### **Department of Transportation (DOT)**

- 39. There are about 250 pages of DOT rules and the Secretary of State charges \$40 per page for publication.
- 40. There needs to be two sets of notices for each set of rules (250 X 2 X \$40 = \$20,000)
- 41. It would take one attorney and one staff person from the affected division for each set of rules. This will be absorbed with existing staff
- 42. It is estimated that the work would be done in the next two fiscal years.

#### **Department of Natural Resources & Conservation (DNRC)**

- 43. All division rules will be acted on in the 2007 biennium.
- 44. There will be four statewide informational meetings for each program's set of rules.
- 45. There will be four follow-up informational meetings for each program's set of rules.
- 46. There will be a formal hearing for each program's set of rules.
- 47. The department estimates 2,530 pages x \$40 (publication cost per page) = \$101,200.
- 48. Statewide meetings would cost and estimate of \$32,568 for the cost of a meeting room, travel, printing, etc.
- 49. It is assumed that existing staff would absorb most duties, except for the addition of 3.00 FTE administrative support staff estimated to cost \$103,276.

#### **Department of Revenue (DOR)**

50. The department will review all rules over a six year period.

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- 51. To administer the provisions of this bill the Department of Revenue will require 0.50 FTE grade 15 rules manager, and 0.50 FTE grade 11 administrative support position estimated to cost \$41,815 in FY 2006 and \$41,698 with \$5,952 in FY 2006 only for initial computer and office equipment purchases.
- 52. Expenses for hearings and printing of the departments administrative rules is estimated to be \$23,488 each year.

#### **Public Employees Retirement System (PERS)**

- 53. PERS has 114 rules. Reviewing each rule over the next six years equates to reviewing 19 rules per year. The average number of pages posted in the MAR per rule is 8. The estimate for printing the rules is \$6,080. (approx 8 pages per rule x 19 rules x \$40/page).
- 54. Noticing and mailing each rule, including a one page cover letter, is estimated at \$12,465.
- 55. Staff time to review and prepare the rules would be covered with existed FTE.

#### **Department of Agriculture**

- 56. The department has 496 pages of administrative rules and currently reviews an average of 40 pages each year. SB 96 would increase that workload by approximately 42 pages per year. There an average of 1.5 pages printed for each page of administrative rules. The differential printing cost would be \$2,520.
- 57. Staff time and other related costs would be absorbed within the agency's existing budget.

#### **Department of Labor & Industry (DLI)**

- 58. The department has approximately 2,000 pages of administrative rules for the department and its administratively attached entities. For purposes of HB 96, the department estimates that it will review, repeal, repropose, and readopt 666 pages of rules in each of the next three biennia, or 333 pages annually.
- 59. The department cannot absorb the workload requirements of HB 96 using its existing staff. In order to carry out the review, repeal, amendment, reproposal, and readoption of 333 pages of administrative rules per year, the department will require 6.5 additional FTE at a total annual cost of \$462,477 (personal services and associated FTE operational costs).
- 60. Approximately 1,500 (three-fourths) of the department's administrative rules are associated with the Business Standards Division (BSD) and its 37 professional and occupational licensing boards and programs, as well as its Building Codes and Weights and Measures Bureaus.
- 61. Each board has a statutory responsibility to participate in the administrative rule process.
- 62. Members of each board will be required to attend rules hearings and meetings in addition to regularly scheduled board meetings, to review, repeal, repropose, amend, and readopt administrative rules. Some boards will meet more often than other boards, depending upon the number of administrative rule applicable to the board, the number of hearings required to address the rules, and other factors.
- 63. The department estimates 236 board members will each meet four extra days over the next six years. Each member receives \$50 per day per diem. The department estimates it will pay \$7,867 per diem to board members annually to attend the additional meetings (236 X \$50 X 4 days / 6 years = \$7,867 per year).
- 64. The department estimates that it will pay \$30,828 annually for board travel expenses (meals, lodging, mileage), \$1,434 for board conference calls, and \$2,000 for board conference rooms associated with board member travel to the additional meetings.
- 65. A court reporter will be required to attend the majority of professional and occupational licensing rules hearings, Weights and Measures rules hearings, and Building Codes rules hearings. The department estimates court reporter expenses associated with HB 96 to be \$10,500 annually (\$125 per hour X 84 hours).
- 66. The department will contract with the Attorney General for Hearing Examiners at \$70 per hour to conduct BSD related administrative rules hearings. The department estimates Hearing Officer expenses associated with HB 96 to be \$7,480 annually (\$70 per hour X 88 hours).

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- 67. The department maintains a statutorily required interested party list of nearly 86,000 persons related to its programs and activities. MCA Title 2, Chapter 4 requires the department to mail notice of all rules changes and outcomes to each of its interested persons. The department estimates paper, envelopes and mailing costs to interested persons resulting from implementation of HB 96 at \$167,571 in each year of the biennium.
- 68. Rule action must be posted and printed in the Montana Administrative Register (MAR). Each page of administrative rules results, on average, in 3.5 MAR pages, at a cost of \$40 per MAR page. The department estimates MAR annual costs at \$46,620 (333 rule pages X 3.5 MAR pages X \$40).
- 69. The department may realize some efficiencies in executing the requirements of HB 96 by streamlining processes or increasing the number of administrative rules per project, but cannot project that data at this time.
- 70. HB 96 requires the department to make available to each legislator a report listing what rule actions were taken, including a statement of reasonable necessity. The bill does not require the report be printed. The department will absorb the cost of preparing the report in its existing budget and staff.
- 71. Of the 2,000 pages of administrative rules utilized by the department, approximately 75 percent are associated with the Business Standards Division, funded solely through state special revenue funds. Approximately 17.5 percent of department rules are associated with workers' compensation, collective bargaining and wages and hours, funded with state special revenue funds. Approximately 5 percent of department rules are associated with federal programs, funded with federal special revenue funds. Approximately 2.5 percent of department rules are associated with Human Rights and other programs funded using general funds.

#### **Department of Public Health & Human Services (DPHHS)**

- 72. DPHHS currently has published 2,593 administrative rules consisting of 3,531pages (for an average of 1.37 pages per rule).
- 73. For each rule printed in the Administrative Rules of Montana by the Secretary of States Office, the DPHHS is required to also submit and print introductory materials and rationales for the rules. These additional pages average three pages for the introduction and rationale.
- 74. Publication and filing of rules also includes the first and second-notice of filing (including public comments and responses) for each rule. The first and second notices average three pages per rule.
- 75. The Secretary of State charges a \$40 per page publication and filing fee of all rules.
- 76. It is estimated that based on the total number of current administrative rules, reviewing these over a six-year period would average 432 rules per year.
- 77. It is estimated that the total number of pages to be filed and printed per year would be 3,184.
  - a. 432 rules x 1.37 average pages per rule = 592 pages
  - b.  $432 \text{ rules } \times 6 \text{ additional pages} = 2,592 \text{ pages}$
  - c. 592 average page + 2.592 additional pages = 3.184 pages
- 78. It is estimated that publication and filing fee's would cost \$127,360 per year.
  - a. 3,184 pages x \$40.00 printing per page = \$127,360
- 79. DPHHS averages 50 addresses that receive mailings of rule notices. Two notices are mailed per rule review, a first and a second notice.
- 80. First and second notice mailings include a copy of the rule with the introductory and the rational. Second notice mailings include a list of the rule changes and copies of the public comments and responses.
- 81. Department of Administration, Publications and Graphics, charges \$0.0308 per page for printing. It is estimated that printing of rules, notices, introductions, rationales and public comments will cost \$4,900 per year.
  - a. 3,184 pages x .0308 printing per page = \$98
  - b. \$98 printing of one copy of all rules, etc. x 50 copies to be mailed = \$4,900

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- 82. The DPHHS must mail notices of rule changes. It is estimated that DPHHS can mail rule notice changes for every 10 rules reviewed. The average weight of one mailing of ten rule notices is 2 ounces. The US Postal Services charges \$0.60 first class postage for a 2-ounce package.
- 83. It is estimated that the annual cost of mailing for rule notices will be \$2,580.
  - a. 432 rules per year / ten per notice mailing = 43
  - b. 43 mailings for first notice + 43 mailings for second notice = 86 mailings
  - c. 86 notice mailings x \$0.60 postage = \$51.60
  - d. \$51.60 postage x 50 addresses = \$2,580
- 84. For purposes of this fiscal note, it is estimated that it will take 1.50 FTE, grade 18 attorney, 1.00 FTE, grade 10 administrative assistant, and 0.75 FTE, grade 13 paralegal to review 432 rules per year.
- 85. Total annual personal services cost are estimated to be \$162,188.
  - a. 1.50 FTE grade 18 attorney x \$63,700 = \$95,550
  - b. 1.00 FTE grade 10 administrative assistant = \$34,423
  - c. 0.75 FTE grade 13 paralegal x \$42,954 = \$32,215
- 86. It is estimated that operational costs for the staff needed to review all agency rules would be \$13,800. This includes \$1,273 each for new employee package to include desk and computer, rent, phone, etc.
- 87. Total annual cost for review of all agency administrative rules is estimated to be \$314,428.
  - a. \$127,360 publication and filing
  - b. \$4,900 printing
  - c. \$2,580 postage
  - d. \$162,188 personal services
  - e. \$13,800 other operating expenses
- 88. It is assumed that these staff would be located in the Director's Office, Legal Bureau of DPHHS. The Legal Bureau is funded at a rate of 54.45 percent general funds, 7.52 percent state special revenues, and 38.03 percent federal funds.

#### FISCAL IMPACT:

TIS OF ILL INVITATION	FY 2006	FY 2007
	<u>Difference</u>	<u>Difference</u>
<b>Commissioner of Political Practices</b>		
Expenditures:		
Operating Expenses	\$1,400	\$1,400
Funding of Expenditures:		
General Fund (01)	\$1,400	\$1,400
Montana School for the Deaf & Blind		
Expenditures:		
Operating Expenses	\$7,185	\$7,185
Funding of Expenditures:		
General Fund (01)	\$7,185	\$7,185

Montana	Arts	Council
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Expenditures: Operating Expenses	\$1,077	\$0
Funding of Expenditures: General Fund (01)	\$1,077	\$0
<b>Montana Historical Society</b> FTE	0.25	0.25
Expenditures: Personal Services Operating Expenses TOTAL	7,715 <u>14,858</u> \$22,573	7,715 14,858 \$22,573
Funding of Expenditures: General Fund (01)	\$22,573	\$22,573
<b>Department of Fish, Wildlife &amp; Parks</b> FTE	2.00	2.00
Expenditures: Personal Services Operating Expenses TOTAL	64,168 <u>17,550</u> \$81,718	64,414 <u>17,550</u> \$81,964
Funding of Expenditures: State Special Revenue (02)	\$81,718	\$81,964
Department of Environmental Quality Expenditures:	,	
Operating Expenses	\$20,000	\$20,000
<u>Funding of Expenditures:</u> General Fund (01)	\$20,000	\$20,000
Department of Transportation  Expenditures: Operating Expenses	\$10,000	\$10,000
Funding of Expenditures: State Special Revenue (02)	\$10,000	\$10,000

Department of Natural Resources & Conserv	ation	
FTE	3.00	3.00
Expenditures:		
Personal Services	103,276	103,276
Operating Expenses	133,768	133,768
TOTAL	\$237,044	\$237,044
Funding of Expenditures:		
General Fund (01)	89,692	89,692
State Special Revenue (02)	137,692	137,692
Federal Special Revenue (03)	9,660	9,660
TOTAL	<u> </u>	\$237,044
TOTAL	\$237,044	\$237,044
<b>Department of Revenue</b>		
FTE	1.00	1.00
		-144
Expenditures:		
Personal Services	41,815	41,698
Operating Expenses	29,440	23,488
TOTAL	\$71,255	\$65,186
<u>Funding of Expenditures:</u>		
General Fund (01)	\$71,255	\$65,186
Public Employees Retirement System		
Expenditures:		
Operating Expenses	\$18,545	\$18,545
Funding of Evenonditumes		
<u>Funding of Expenditures:</u> Other - Retirement Trust Fund	\$18,545	\$19 <i>515</i>
Other - Rethement Trust Fund	\$10,343	\$18,545
Department of Agriculture		
Expenditures:		
Operating Expenses	\$2,520	\$2,520
Operating Expenses	\$2,320	Ψ2,320
Funding of Expenditures:		
General Fund (01)	100	100
State Special Revenue (02)	1,588	1,588
Federal Special Revenue (03)	832	832
TOTAL	\$2,520	\$2,520
	<b>+-,</b>	\$ <b>2,52</b> 0

<b>Department of Labor &amp; Industry</b> FTE	6.50	6.50
Expenditures: Personal Services Operating Expenses TOTAL	417,982 <u>317,916</u> \$735,898	417,982 <u>296,752</u> \$714,734
Funding of Expenditures: General Fund (01) State Special Revenue (02) Federal Special Revenue (03) TOTAL	18,419 680,640 <u>36,839</u> \$735,898	17,890 661,063 <u>35,781</u> \$714,734
<b>Department of Public Health &amp; Human</b> FTE	Services 3.25	3.25
Expenditures: Personal Services Operating Expenses TOTAL	162,188 <u>148,640</u> \$310,828	162,188 <u>148,640</u> \$310,828
Funding of Expenditures: General Fund (01) State Special Revenue (02) Federal Special Revenue (03) TOTAL	169,246 23,374 <u>118,208</u> \$310,828	169,246 23,374 <u>118,208</u> \$310,828
All Agencies - Total  Expenditures: FTE	16.00	16.00
Personal Services Operating Expenses TOTAL	797,144 <u>722,899</u> \$1,520,043	797,273 <u>694,706</u> \$1,491,979
Funding of Expenditures: General Fund (01) State Special Revenue (02) Federal Special Revenue (03) Other – Retirement Trust Fund	\$400,947 \$935,012 \$165,539 \$18,545	\$393,272 \$915,681 \$164,481 \$18,545
Net Impact to Fund Balance (Revenue min General Fund (01) State Special Revenue (02) Federal Special Revenue (03) Other – Retirement Trust Fund	(\$400,947) (\$935,012) (\$165,539) (\$18,545)	(\$393,272) (\$915,681) (\$164,481) (\$18,545)

#### **LONG-RANGE IMPACTS:**

For those agencies who would spread the cost of rule review of the six year period, the costs would b ongoing. For those agencies who complete the review in the 2007 biennium, funding would be necessary in the 2013 biennium to repeat the review process.